

THE WATCHDOG

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A Periodic Newsletter from the Office of the United States Trustee
Region 16 - Central District of California
March 2009 - Issue No. 21
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INSIDE:

News from the Court
Case Filing Information
New Procedures for Completing
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Civil and Criminal News
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Important Links:



www.usdoj.gov/ust/r16 provides a wealth of information on Region 16. There's a page devoted to each of the field offices; Los Angeles, Riverside, Santa Ana, Woodland Hills and its Santa Barbara satellite office. You can find maps to the office and meeting rooms, parking information, and a staff directory with phone numbers. Find out about a variety of topics like "Brown Bag" Training series, local forms and references, how to submit criminal complaints fraud and report identity theft, public notices and local policies. A quick click on the "What's New" link will show you what documents have been added or updated.

You can use the "Email Us" link to create an email addressed to us. Email us with questions or comments about the web page, or with questions about bankruptcy topics. Please do not submit a complaint or fraud complaint this way - follow the instructions on the "Complaints" page. Always keep in mind that we cannot provide legal advice.

www.cacb.uscourts.gov/ will link you directly with the U.S. Bankruptcy Court - Central District of California .

Visit the U.S. Trustee Program's website,

www.usdoj.gov/ust/. It's loaded with information on the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005

For information on:

- Means Testing forms and IRS Standards
- Credit Counseling & Debtor Education
- State Domestic Support Enforcement Agencies
- Data Enabled Form Standard

You can also find:

- Annual Reports
- Bankruptcy Statistics
- Press Releases
- Testimony & Statements



Questions for Region 16 can be directed to:
www.ustp.region16@usdoj.gov

Please contact us with suggestions and topics. To make sure you are included in our "subscriber" data base, please e-mail your address to the address above and put "WATCHDOG" in your subject line.

Watchdog Staff

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A MESSAGE FROM UNITED STATES TRUSTEE PETER C. ANDERSON



In 2008, United States Trustee staff filed hundreds of actions in response to perceived abuse. Some of these actions resulted from referrals to us from parties in the case. People sometimes assume that this is all we do since that is what they see most often. But, that would be in error.

Staff puts enormous efforts into administering BAPCPA's Patient Care Ombudsman (PCO) requirements. In an effort to ensure the safety and welfare of one of the most vulnerable groups of persons affected by the bankruptcy process, Section 333 requires the bankruptcy court to order the United States Trustee to appoint a disinterested patient care ombudsman in every healthcare business case under chapters 7, 9, or 11, unless the court finds that the appointment is not necessary under the specific facts of the case.

The Office frequently finds itself involved in a discussion early in the case over whether the appointment of a PCO is necessary. It has been sometimes suggested that this Office serve as some sort of an informal PCO. However, this Office is not authorized by law to play that role, and is not equipped to do so. The role of a PCO is to monitor the quality of patient care and to represent the interests of the patients. To meet this charge, a PCO is to interview patients, physicians, and other staff, and to review records, as necessary to satisfy the statute's mandate. Although an initial report must be filed by the PCO within 60 days of

appointment, if the PCO determines that the quality of patient care is declining significantly, or is otherwise being materially compromised, than the PCO must immediately file a motion or written report, with notice to the parties in interest (see "The United States Trustee Program Administers BAPCPA's Patient Care Ombudsman Requirements", by Roberta A. DeAngelis, Acting General Counsel, and Paul W. Bridenhagen, EOUST, which appears in its entirety on the EOUST website under Bankruptcy Articles and was published in ABI Journal Vo. XXVII, No. 4).

Another area in which this Office thoroughly considers appointments relates to the appointment of Chapter 11 trustees. While many sections of the Bankruptcy Code provide the parties and the courts with considerable discretion in maneuvering a case through Chapter 11, the provisions dealing with the appointment of a Chapter 11 trustee are not discretionary. If grounds exist for the appointment of a trustee, than a trustee must be appointed. Nowhere in the Bankruptcy Code does a "responsible person" appear as an alternative to a DIP or a Chapter 11 trustee. Whether a corporate debtor may irrevocably turn its affairs over to a "responsible person" must be determined under state law.

U.S. Trustees take seriously their obligation to consult with parties in interest in selecting persons to appoint as Chapter 11 trustees, and creditors may elect a trustee of

their choice, if they are unhappy with the appointment. A Chapter 11 trustee's compensation must be reasonable and is limited by Section 326. The ultimate consideration militating against "responsible person" appointments and in favor of trustee appointments is our duty as attorneys to respect the rule of law (see "Who is Responsible Here? 'Responsible Persons' in Chapter 11 Cases", by Walter W. Theus, Jr., Trial Attorney, EOUST, which appears in its entirety on the EOUST website under Bankruptcy Articles and was published in ABI Journal Vol. XXVII, No. 5).

As of April 1, 2009, 28 C.F.R. adds new part 58.7 to provide for the use of uniform reports including final reports and accounts in Chapter 12 and 13, and the trustee's final report, the notice of final report, the trustee's final account and the trustee's no asset report in Chapter 7. Instead of many different versions of trustee final reports, trustees throughout the country will use the same eight forms. The forms are available for public viewing at the EOUST website at www.usdoj.gov/ust

under the heading Bankruptcy Reform at Rulemaking. Training under the new version 3.3 of CM/ECF is available in the Electronic Systems and Status section at www.cacb.uscourts.gov.

The usage of these Uniform Forms is intended by Congress to assist policy makers, scholars, and the public in better understanding the bankruptcy system. In addition, this also should assist consumers greatly in being able to understand the administration of bankruptcy cases, especially when a consumer is located in a region that is not where the bankruptcy case is located. Finally, the information from the Uniform Final Report Forms may be nationally aggregated, which could assist Congress in compiling data to accurately analyze bankruptcy trends when making policy decisions.

Peter C. Anderson
United States Trustee



CENTRAL DISTRICT CASE FILING INFORMATION 2008

<u>Chapter 7</u>		<u>Chapter 11</u>		<u>Chapter 13</u>	
December	5069	December	65	December	1553
November	4561	November	78	November	1449
October	5018	October	44	October	1364
September	4731	September	60	September	1589
August	4471	August	235	August	1579
July	4470	July	60	July	1537
June	4080	June	50	June	1315

DOJ WELCOMES BACK ERIC H. HOLDER, JR.

ERIC H. HOLDER, JR. was sworn in as the 82nd Attorney General of the United States on February 3, 2009. He is the first African-American to hold this position. In 1997, Mr. Holder also became the first African-American to be appointed Deputy Attorney General by then President Bill Clinton. Prior to this appointment, Mr. Holder served as the U.S. Attorney for the District of Columbia.

Mr. Holder hails from the 'Big Apple' where he attended public school. After graduating from Stuyvesant High School, Mr. Holder attended Columbia College where he majored in American History and graduated in 1973. Mr. Holder graduated from Columbia Law School in 1976.

Mr. Holder is no stranger to the DOJ. While in law school, he clerked at the NAACP Legal Defense Fund and the DOJ's Criminal Division. After graduation, Mr. Holder joined the DOJ through the Attorney General's Honor Program where he was assigned to the Public Integrity Section which investigated and prosecuted office corruption in all levels of the government.

Mr. Holder is married to Dr. Sharon Malone, a physician, and has three children.

For more information about our new Attorney General, please visit www.usdoj.gov.



REPORT FROM THE U.S.B.C.

L. Charmayne Mills, Assistant U.S. Trustee

RECAP – New and Revised Local Bankruptcy Rules, New General Orders, and New Court Manual – Effective January 5, 2009

The United States Bankruptcy Court has recently completed a major revision of the Local Bankruptcy Rules (LBRs), issued new General Orders and a new Court Manual which supercedes the former Desk Reference Manual and consolidates Case Management/Electronic Case Filing (CM/ECF) Manual and Lodged Orders Upload (LOU) Procedures. The new Court Manual also includes procedures and forms from the Court's web site at www.cacb.uscourts.gov.

The Local Bankruptcy Rules (LBRs) were revised to comply with changes adopted by the 2003 Judicial Conference of the United States and the *Guidelines for Drafting and Editing Court Rules*, issued by the Administrative Office of the Courts. The new LBRs also include existing General Orders and new rules for mandatory electronic filing of case documents. The purpose of the changes is to make the LBRs easier to understand and apply. New General Order 09-01 Vacates Nine General Orders and Adopts F.R.B.P. Interim Rule 1007-I. Vacated Orders are: 93-01; 97-04; 02-02; 05-03; 06-01; 06-02; and 07-01.

The Court Manual replaces the Desk Reference Manual and includes information, instructions, and requirements for use by lawyers, legal assistants, and the general public. The Court Manual provides filing procedures, clerical and mechanical rules and requirements for the preparation of pleadings; orders and lodging procedures, and accessing court dockets and court

technology. Please check Court website under Forms/Rules/General Orders for any and all information on new Local Bankruptcy Rule Changes.

**New Procedures for Completing
Uniform Trustee Final Reports in
Cases Filed Under Chapter
7,12,and 13 of the
Bankruptcy Code**

Section 602 of the BAPCPA, codified at 28 U.S.C. § 589b, requires the Attorney General to issue rules requiring uniform forms for final reports by trustees under chapters 7, 12, and 13 of the Bankruptcy Code (uniform forms). The proposed rule was published in the Federal Register (73 Fed. Reg. 6447 – 6451 (Feb. 4, 2008)), and comments were accepted through April 4, 2008. After considering the public comments and other information, the final rule has been published in the Federal Register (73 Fed. Reg. 58438 – 58445 (Oct. 7, 2008)). The rule is effective April 1, 2009. It is available for viewing on-line at www.usdoj.gov/ust.

CAPITAL ONE SETTLEMENT

*The following is a press release issued by the
Department of Justice on October 2, 2008*

**Nationwide Settlement Between U.S.
Trustees and Capital One Bank (USA)
N.A. Addresses Monies Improperly
Collected in Bankruptcy Cases**

WASHINGTON, D.C.–The U.S. Trustee Program (USTP or Program) announced today that it has entered into a settlement agreement with Capital One Bank (USA) N.A. (Capital One) that, if approved by the United States Bankruptcy Court for the District of Massachusetts, will resolve

USTP allegations that Capital One sought to collect debts that had been discharged in prior bankruptcy cases.

Under the settlement, an independent auditor will examine approximately 650,000 Capital One customer accounts to ensure that any monies improperly received by Capital One have been or are immediately returned to debtors or their bankruptcy estates. The auditor will also approve reimbursement to debtors and trustees for actual out-of-pocket costs and expenses, including attorneys' fees incurred to contest erroneous claims. Capital One filed approximately 5,600 proofs of claim seeking payment of debts that had been discharged in prior bankruptcy cases.

Though the agreement is binding on Capital One and offices of the United States Trustee across the country, it does not bind or prejudice the rights and claims of third parties.

Background

Today the USTP filed a complaint in the United States Bankruptcy Court for the District of Massachusetts alleging that Capital One filed approximately 5,600 proofs of claim seeking payment of debts that had been discharged in prior bankruptcy cases. Capital One has acknowledged that chapter 13 bankruptcy estates paid the company approximately \$340,000 to which it was not entitled. Capital One reports that it has returned most of the improperly obtained payments, and has withdrawn, or is seeking to withdraw, all erroneously filed proofs of claim.

In a settlement of the USTP's complaint, Capital One has agreed to hire an independent auditor, chosen by the court and paid for by Capital One, who will supervise the conduct of an audit to ensure

all improperly received funds are returned to affected debtors and their estates. The audit will identify and verify each case in which Capital One erroneously filed a proof of claim against discharged debt. The auditor will review all proofs of claim filed between January 1, 2005, and the two years following the date of the consent decree to be entered by the Bankruptcy Court. The settlement requires that the audit period be extended if more than 100 erroneous claims are found in one year. The settlement remains subject to the review and approval of the United States Bankruptcy Court for the District of Massachusetts.

Post Script: A joint motion filed by the Plaintiff U.S. Trustee and Defendant Capital One Bank to approve the stipulated final judgment and order thereon in this matter was granted November 13, 2008.

CRIMINAL ENFORCEMENT NEWS

Foreclosure Scam Operator Sentenced to Over Seven Years in State Prison

On September 11 in the San Fernando Division of the Superior Court of the State of California, James Anthony Rojas was sentenced to seven years and eight months in state prison for foreclosure and investment fraud. The U.S. Trustee's Woodland Hills office provided the district attorney with exhibits for the preliminary hearing in support of the felony complaint, spreadsheets showing cases in which Rojas had fractionalized interests in real properties and filed fraudulent bankruptcy petitions, and technical assistance regarding bankruptcy law. After a jury convicted Rojas of 14 felony counts including forgery, grand theft, and attempting to file forged documents, as well as three counts of rent

skimming, the court ordered Rojas to serve the maximum sentence.

Debtor Charged with Bankruptcy Crimes, Money Laundering, Assaulting Process Server

On September 11, a grand jury in the Central District of California indicted chapter 7 debtor Milton Lee Vandevort on charges of concealing assets and making false oaths and statements relating to his ownership interest in a residence in Los Angeles' Bel Air neighborhood, his interest in an escrow account containing more than \$700,000, and certain "pass through" entities he created for income generated from Always There Nursing Care. In approximately five years, the "pass through" entities generated nearly \$7 million in gross receipts or sales. Vandevort was also charged with money laundering and assaulting a process server hired by the chapter 7 trustee to serve subpoenas on Vandevort's wife. The Regional Bankruptcy Analyst in the U.S. Trustee's Los Angeles office assisted the prosecution team and the FBI in the criminal case.

Debtor Sentenced to Two Years in Prison, Ordered to Pay Restitution and Fine

Mark A. Pizzuto was sentenced on November 3 in the Central District of California to two years in prison and ordered to pay restitution of approximately \$176,000 and a fine of \$30,000. Pizzuto previously pled guilty to making a false oath or account in a bankruptcy proceeding. When Pizzuto filed chapter 7 bankruptcy, he failed to disclose his 100 percent ownership interest in Shadowland Investments and his ownership of four Nevada residential properties. Several months before filing bankruptcy,



Pizzuto had executed a quit claim deed transferring to Shadowland Investments his ownership interest in the Nevada properties. The deed was recorded approximately one month pre-petition. After Pizzuto received a discharge of more than \$2.9 million in unsecured debt, the chapter 7 trustee received information that he had concealed assets and moved to reopen the case. During a section 341 meeting of creditors in the reopened bankruptcy case, Pizzuto falsely denied having any interest in Shadowland Investments.

Debtor Pleads Guilty to Bankruptcy Fraud

On December 10 in the Central District of California, Arthur Robert Gomez, a/k/a Arthur Joseph Gomez, Joseph Robert Livia, Joseph Basurto, Raul Basurto, Raul Basurto, Jr., Arthur Martinez, and Art Mendez, pled guilty to bankruptcy fraud and was sentenced to a year and a day in prison. In his bankruptcy case, Gomez used a false name and Social Security number and concealed his use of additional names and multiple prior bankruptcy cases. The U.S. Trustee's Woodland Hills office referred the matter and assisted the U.S. Attorney and the Social Security Administration's Office of Inspector General.

CIVIL ENFORCEMENT NEWS

Debtor with Under-Reported Income Needs to be in Chapter 13

The Bankruptcy Court for the Central District of California on June 26 approved a stipulation to convert a debtor's case to chapter 13, preventing the chapter 7 discharge of \$180,255 in unsecured debt. An investigation by the U.S. Trustee's Los Angeles office revealed the debtor under-reported his monthly gross income by more

than \$4,000. Adjustments to his income and expenses resulted in over \$2,100 in monthly disposable income.

Chapter 11 Trustees Appointed in Real Estate Investment Cases

On July 23, the Bankruptcy Court for the Central District of California ordered the appointment of chapter 11 trustees in related real estate investment cases. The debtors solicited and obtained over \$175 million in funds to be invested primarily in construction loans secured by deeds of trust on real property. After these funds were solicited, the California Department of Corporations revoked the debtor's permit to sell securities, based on misrepresentations in its Offering Circular. The debtors asked the court to approve new managers, hired by the debtor's principals, to manage the bankruptcy cases. The U.S. Trustee's Woodland Hills office objected, requesting the court to approve the appointment of disinterested trustees. The court found that due to investor distrust the appointment of disinterested trustees was in the best interests of the estates.

No Show? No Discharge.

On August 19, the Bankruptcy Court for the Central District of California entered a default judgment denying the debtor's chapter 7 discharge of \$312,453 in unsecured debt. The U.S. Trustee's Santa Ana office objected to discharge after investigating a tip regarding a cancelled check for \$135,000 that the debtor received in a divorce settlement. The debtor did not adequately explain the disposition of the funds at her section 341 meeting of creditors. The U.S. Trustee obtained a court order to examine her and require her to produce documentation. She failed to appear for her examination and failed to produce the requested documents.

Where are the Diamonds?

On October 3, the Bankruptcy Court for the Central District of California dismissed the case of a debtor, preventing the chapter 7 discharge of \$1,048,597 in scheduled unsecured debt. The U.S. Trustee's Woodland Hills office found the debtor incurred over \$1 million in unsecured debt, and purchased luxury properties and cars, when his annual income was no more than \$15,000. In addition, the debtor claimed he incurred \$560,000 of the debt to purchase diamonds for which he could not account. In response to the U.S. Trustee's motion, the debtor stipulated to dismissal of the case.

Dismissal and Bar for Concealed Cayman Island Companies

The Bankruptcy Court for the Central District of California on December 19 approved a stipulated dismissal with an 18-month bar against refiling under any chapter by this debtor, preventing the discharge of \$13,233,751 in unsecured debt. The debtor stipulated to dismissal in response to a complaint filed by the U.S. Trustee's Woodland Hills office, which alleged that he failed to list interests in several Cayman Islands companies and could not account or provide documentation for financial transactions.

Waiver Prevents Chapter 7 Discharge of Nearly \$2.9 Million in Unsecured Debt

On January 13, the Bankruptcy Court for the Central District of California approved a debtor's waiver of the chapter 7 discharge of \$2,885,873 in scheduled unsecured debt. The U.S. Trustee's Woodland Hills office objected to the debtor's discharge, alleging she failed to keep records from her jewelry business, made false oaths regarding her income and business, concealed a transfer

of real property, and could not explain her finances. The debtor consented to waive discharge immediately before she was scheduled to be deposed by the U.S. Trustee.

Attorney Discipline

Debtors' Attorney Sanctioned for Pattern of Inadequate Representation

On December 24, a three-judge panel of the Bankruptcy Court for the Central District of California issued an order disciplining an attorney after the U.S. Trustee's Woodland Hills office presented evidence from 11 cases that demonstrated a pattern of inadequate representation. The panel found that the attorney abandoned his clients; failed to comply with court orders, the Bankruptcy Code and Rules, the Rules of Professional Conduct, and state law; and failed to adequately communicate with his clients and other parties in interest. The panel prohibited the attorney from representing chapter 11 debtors without further order of the bankruptcy court, and suspended him from all practice before the bankruptcy court for at least two years unless, at a future hearing, he demonstrates his ability to represent clients. In addition, in response to the U.S. Trustee's recommendation for discipline, the attorney disgorged funds and paid outstanding sanctions in nine cases, for a total of \$14,915, including fee refunds to several senior citizens whom he charged but failed to assist as promised.



New OUST Staff

The Los Angeles Field Office obtained a new Trial Attorney starting October 14, 2008. **Hatty K. Yip** graduated from Southwestern University School of Law in May 2006, graduating Summa Cum Laude. She was admitted to the State Bar of California in December 2006.

From September 2006 until August 2008, Ms. Yip served as a Judicial Law Clerk to the Honorable Maureen A. Tighe. She was accepted into the U.S. Trustee Program through the Department of Justice Honors Program, and chose a position with the Los Angeles Office. During the summer immediately following her second year of law school (2005), Ms. Yip interned in the Santa Ana Office of the U.S. Trustee Program, and formed the desire to have a career in the U.S. Trustee Program as a result of that experience.

Her past work experience includes an internship with a prestigious commercial law firm in Hong Kong, an internship with a solo practitioner, and an externship with the Honorable Robert W. Alberts in Santa Ana

during the summer after her first year of law school.

In her new position as a Trial Attorney, Ms. Yip is working on chapter 7 “means testing” review. She is also monitoring chapter 7 and chapter 11 hearings to learn more about the role of a Program Trial Attorney. Recently she completed a series of training sessions on chapter 7 trustee oversight as well.

Ms. Yip has a number of interesting non-work avocations, including an active involvement in tennis, in which she both captains and plays. She has already played in one state tournament since coming to the Program! Other interests include cooking and traveling - she spent a month touring Asia in September of this year. She has lived and studied abroad in Beijing, China, and is fluent in Cantonese Chinese and Mandarin Chinese.

Please welcome Ms. Yip to her new position. Her co-workers in Los Angeles are grateful and excited that she has joined them.